

REMARKS

This Amendment is submitted in response to the final Office Action mailed on November 1, 2008. Applicants also submit herewith a Request for Continued Examination, a Petition for two month Extension of Time and associated fee. Please charge Deposit Account No. 02-1818 and charge any other fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-486 on the account statement.

Claims 1, 3-12 and 14-17 are pending in this application. Claims 2 and 13 were canceled previously. In the Office Action, Claims 1, 5, 8, 10 and 11 are rejected under 35 U.S.C. §102 and Claims 1, 3-12 and 14-17 are rejected under 35 U.S.C. §103. In response, Applicants have amended Claims 1 and 12. The amendments do not add new matter are supported, for example, at page 2, lines 7-9 and page 4, lines 19-24 of the specification. In view of the amendments and for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1, 5, 8, 10 and 11 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 4,012,533 to *Jonas* ("Jonas"). Amended independent Claim 1 recites, in part, a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages and the milk product is room temperature stable for at least one month and does not need to be cooled prior to providing the foamed composition. Applicants respectfully submit that *Jonas* fails to disclose or suggest every element of the rejected claims.

Jonas fails to disclose or suggest a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages, and the milk product is room temperature stable for at least one month as required, in part, by independent Claim 1. Instead, *Jonas* teaches that its whipped dessert is "freeze-thaw stable" such that the dessert may be alternately consumed as an ice cream-type product or as a whipped topping, and may be refrozen between consumptions. See, *Jonas*, column 2, lines 21-29. Moreover, even though the whipped dessert in *Jonas* is resistant to syneresis and/or foam collapse in the thawed condition, that stability and resistance is limited. See, *Jonas*, column 2, lines 30-31. In fact, rather than teaching extended room temperature stability, the Office Action admits that *Jonas* teaches that the milk product does not exhibit syneresis or foam breakdown for only 6 to 8 hours at room

temperature. See, Office Action, page 3, lines 2-4 and *Jonas*, column 2, lines 60-65. By contrast, as stated by independent Claim 1, the present invention is capable of storage for months at room temperature.

Jonas also fails to disclose or suggest a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages and the milk product does not need to be cooled prior to providing the foamed composition as required, in part, by Claim 1. By contrast, the compositions of *Jonas* require chilling before forming foam compositions. Specifically, the examples in *Jonas* teach whipping in a continuous ice cream freezer at 46-50°F, whipping in an M-10 Creamery Package continuous freezer at 47-48°F, and whipping in a bowl jacketed with slush ice or ice water slurry to maintain a whip temperature of 40°F. See, *Jonas*, column 10, lines 24-30; column 11, lines 47-51; column 12, lines 50-55, and column 14, lines 56-68. In fact, not only does the composition in *Jonas* require cooling prior to whipping, it also requires freezing after the whipping step to maintain stability. See, *Jonas*, column 10, lines 35-37 and 56-58; column 11, lines 54-56; column 12, lines 63-68, and column 14, lines 67-68. Therefore, rather than the room temperature preparation of the present claims, *Jonas* teaches a consistent cold process to form its composition.

Accordingly, Applicants respectfully submit that *Jonas* fails to disclose or suggest every element of the rejected Claims 1, 5, 8, 10 and 11.

In the Office Action, Claims 3-4 and 6-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of U.S. Patent No. 6,033,711 to Gonsalves et al. (“*Gonsalves*”). Applicants respectfully submit that the patentability of Claim 1 established above renders moot the rejections of Claims 3-4 and 6-7 that depend from Claim 1.

Accordingly, Applicants respectfully request that the anticipation rejection of Claims 1, 5, 8, 10 and 11 and the obvious rejections of Claims 1, 3-8, 10 and 11 be withdrawn.

In the Office Action, Claims 9 and 12-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of *Gonsalves* and further in view of U.S. Patent No. 5,759,609 to Lynch (“*Lynch*”). As to Claim 9, Applicants respectfully submit that the patentability of Claim 1 established above renders moot the rejection of Claim 9 that depends from Claim 1. As to the rejection of Claim 13, Applicants note that Claim 13 was previously canceled.

As to Claims 12 and 14, amended independent Claim 12 recites, in part, a method of forming a milk product for providing at room temperature, either by shaking or with a foaming

device, a foamed composition for beverages, wherein the milk product is room temperature stable for at least one month and does not need to be cooled prior to providing the foamed composition. The amendment is supported in the specification at page 2, lines 7-9 and page 4, lines 19-24. Even if the cited references are combinable, which Applicants submit they are not, the cited references still fail to disclose or suggest every element of the rejected claims.

Jonas fails to disclose or suggest a method of forming a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages, wherein the milk product is room temperature stable for at least one month as required, in part, by independent Claim 12. Instead, as stated above, *Jonas* teaches that its whipped dessert is "freeze-thaw stable" such that the dessert may be alternately consumed as an ice cream-type product or as a whipped topping, and may be refrozen between consumptions. See, *Jonas*, column 2, lines 21-29. Moreover, even though the whipped dessert in *Jonas* is resistant to syneresis and/or foam collapse in the thawed condition, the Office Action admits that *Jonas* teaches a limited stability such that the milk product does not exhibit syneresis or foam breakdown for only 6 to 8 hours at room temperature. See, Office Action, page 3, lines 2-4 and *Jonas*, column 2, lines 60-65. By contrast, as stated by independent Claim 1, the present invention is capable of storage for months at room temperature.

Jonas also fails to disclose or suggest a method of forming a milk product for providing at room temperature, either by shaking or with a foaming device, a foamed composition for beverages, wherein the milk product is does not need to be cooled prior to providing the foamed composition as required, in part, by Claim 12. By contrast, the compositions of *Jonas* require chilling before forming foam compositions. Specifically, the examples in *Jonas* teach whipping in a continuous ice cream freezer at 46-50°F, whipping in an M-10 Creamery Package continuous freezer at 47-48°F, and whipping in a bowl jacketed with slush ice or ice water slurry to maintain a whip temperature of 40°F. See, *Jonas*, column 10, lines 24-30; column 11, lines 47-51; column 12, lines 50-55, and column 14, lines 56-68. Therefore, rather than the room temperature preparation of the present claims, *Jonas* teaches a consistent cold process to form its composition.

Applicants further submit that *Gonsalves* and *Lynch* fail to remedy the deficiencies of *Jonas*. The Office Action mailed June 25, 2007 relies on *Gonsalves* arguably to teach the use of suitable emulsifiers. Moreover, the same Office Action relies on *Lynch* arguably to teach

elements of dependent Claim 9 rather than independent Claim 12. Therefore, Applicants submit that the cited references fail to disclose or suggest every element of the present claims.

In the Office Action, Claims 15-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view *Gonsalves, Lynch* and U.S. Patent No. 3,230,091 to Thompson ("Thompson"). Applicants respectfully submit that the patentability of Claims 1 and 12 established above renders moot the rejections of Claims 15 and 17 that depend from Claim 1 and Claim 16 that depends from Claim 12.

Accordingly, Applicants respectfully request that the obvious rejections of Claims 9, 12-17 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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